IN THE HIGH COURT OF UTTARANCHAL
AT NAINTIAL

Government Appeal No. 11 of 2006
(Old No. 1525 of 1992)

The State of U.P. ...Appellant

Vs

1. Pretpal S/o Sri Hardev
   R/o Simali P.S. Lakas
   District Haridwar
2. Bachchan S/o Bablu Singh
   R/o Laksar P.S. Laksar
   District Haridwar
3. Rajkumar S/o Malkhan Singh
   R/o Village Akautha
   P.S. Laksar
   District Haridwar
4. Raj Kumar S/o Hasm Singh
   R/o Simali P.S. Laksar
   District Haridwar ....Respondents

Sri Nandan Arya, learned A.G.A. for the State
Sri Vivek Shukla, learned counsel for the respondent No. 3

Hon'ble B.C. Kandpal, J.

Heard Sri Nandan Arya, learned A.G.A. for the State, Sri Vivek Shukla, learned counsel for the respondent No. 3 and perused the record.

2. This appeal has been preferred by the State against the judgment and order dated 14.05.1992 passed by Additional Chief Judicial Magistrate, Roorkee in Case No. 2305 of 1990 State Vs Pritpal & others under Section 323, 506, 394 I.P.C. thereby acquitted the accused for the charges leveled against them.

3. The State filed this appeal against the aforesaid judgment and order before the Allahabad High Court which has been transferred to this Court after creation of new State, for disposal. After receipt of the record notices were issued to

the parties. Sri Vivek Shukla has appeared on behalf of the respondent No. 3 as the respondents No. 1, 2 and 4 are already dead.

4. The impugned judgment and order passed by the trail court shows that the identification of the accused persons is doubtful in view of the testimony of the witnesses itself. The manner of incident as has been alleged by the prosecution also appears to be doubtful. The trail court has also discussed the evidence of the prosecution witnesses at length and then recorded the categorical finding that the delay in lodging the report as well as the contradiction in the statement of the statement of the witnesses with regard to the fact of scribing the First Information Report creates doubt on the genesis of the prosecution case.

5. I do not find any perversity and infirmity in the judgment and order passed by the trail court acquitting the accused/respondent. It is settled law if two views are possible then this Court while sitting in the appeal cannot adopt another view. The trail court has rightly disbelieved the testimony of the prosecution witnesses and I do no find any reason to discard the conclusion drawn by the trail court.

6. The appeal against the acquittal of accused/respondents lacks merit is liable to be rejected.

(B.C. Kandpal, J.)

11.08.2006
ASWAL